

103 CMR 486: DEPARTMENT OF CORRECTION

103 CMR 486: ATTORNEY ACCESS AT MASSACHUSETTS CORRECTIONAL INSTITUTIONS

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486.01 Purpose

103 CMR 486 is designed to facilitate inmate access to legal counsel. 103 CMR 486 sets forth standards for access to inmates afforded to attorneys, law students, paralegals, private investigators and interpreters and shall not be construed to prohibit the superintendent of any state correctional facility from granting additional access under appropriate circumstances.

486.02 Cancellation

103 CMR 486 cancels all previous Department of Correction (“Department”) or institution policy statements, rules or regulations relating to access to inmates by attorneys, law students, paralegals, private investigators or interpreters if such policy statements, rules or regulations are inconsistent with 103 CMR 486.

486.03 Applicability

103 CMR 486 is applicable to all employees and inmates at all state correctional institutions within the Department.

486.04 Access

103 CMR 486 shall be maintained in the central policy file of the Department and shall be accessible to all Department employees. A copy of 103 CMR 486 shall also be maintained in each superintendent’s central policy file, in each inmate library, and available upon request at the lobby of each correctional institution.

486.05 Definitions

Attorney - Any active member of the bar of Massachusetts or any other jurisdiction, state or federal, who is in good standing, or any law school graduate who is practicing pursuant to Massachusetts Supreme Judicial Court Rule 3:03, and who represents, seeks to represent, or wishes to meet with, an inmate at a Massachusetts Correctional Institution for pending or potential litigation purposes or for the purposes of an administrative hearing.

Inmates Housed Apart from the General Population – Any inmate in administrative separate confinement or segregation as a result of Departmental classification or hospital confinement.

Interpreter – Any person screened and/or certified by the Massachusetts Trial Court Office of Court Interpreter Services who converts spoken, written or sign language statements from one language to another.

Law Student – Any person enrolled in an accredited law school.

Non-Contact Visit – A one-on-one meeting between an attorney and an inmate with an opportunity for conversational privacy, eye-contact, and the ability to exchange court documents and legal materials with the assistance of correctional staff, but without an opportunity for physical contact.

Paralegal – Any person who works on legal and related matters under the authorization and supervision of an attorney as defined in this section.

Pat Down Search – A clothed search of an individual limited to the pressing of hands against the outer surface of an individual's clothing, including the interior of pockets, as well as inspection of an individual's hair or hairpiece. It does not include the removal of any of the person's clothing except footwear, accessories (e.g., belts, scarves, etc.) and outer garments (e.g., sweaters, blazers, suit jackets, coats, hats, etc.), which may be inspected upon such removal.

Private Investigator – A person who is licensed pursuant to M.G.L. c. 147, § 25 or is exempt from said licensing requirements pursuant to M.G.L. c. 147, §23, and is engaged in business as a private detective, private investigator, or investigator, and who is either working under the authorization and supervision of an attorney, or on a verified pro se litigation, or has been appointed to an active legal matter by a court of competent jurisdiction.

Reasonable Suspicion – Specific, articulable facts and circumstances that warrant a rational inference by a person with correctional experience that a visitor may be engaged in, attempting to engage in, or about to engage in, criminal or other prohibited activity. Triggering a metal detection device alone, does not create reasonable suspicion, but may be considered in determining whether reasonable suspicion exists.

486.06 General Requirements

(1) An attorney shall be entitled to access as provided in 103 CMR 486 for the purpose of establishing or furthering an attorney/client relationship or for the purpose of interviewing a witness for pending or potential litigation or an administrative hearing in which the attorney represents a party, in each case if the inmate with whom he/she wishes to visit agrees to such a visit. An attorney may be required to identify the purpose of a visit as conforming to the specifications of the foregoing sentence but shall not be required to disclose the purpose of a visit or the nature of his/her business in any greater detail.

(2) A law student shall be entitled to access as provided in 103 CMR 486 for the purposes specified in 103 CMR 486.06(1), if the law student is working under the authorization and supervision of an attorney, provided:

- (a) that said law student has at least three (3) business days prior to the first intended visit to an institution, supplied to the institution a letter signed by the dean, a member of the dean's staff, the registrar or a member of the registrar's staff, of the student's law school identifying the student as enrolled at that law school; and
- (b) the dean, a member of the dean's staff, the registrar or a member of the registrar's staff, has confirmed the letter when telephoned by an employee of the institution.

(3) A paralegal shall be entitled to access as provided in 103 CMR 486 for the purposes specified in 103 CMR 486.06(1) if the paralegal is working under the authorization and supervision of an attorney, provided:

- (a) that said paralegal has at least three (3) business days prior to the first intended visit to an institution, supplied to the institution, a letter signed by the attorney which identifies the paralegal as working under the authorization and supervision of the attorney; and
- (b) that the attorney or a member of the attorney's staff has confirmed the letter when telephoned by an employee of the institution.

No provision in 103 CMR 486 shall be interpreted to permit representation of an inmate by a paralegal at a Department of Correction disciplinary or classification hearing.

(4) A private investigator who is licensed pursuant to M.G.L. c. 147, § 25, or is exempt from said licensing requirements

pursuant to M.G.L. c. 147, §23, and is working under the authorization and supervision of an attorney or a pro se litigant, or has been appointed by a court of competent jurisdiction to an active legal matter, shall be entitled to access as provided in 103 CMR 486 for the purposes specified in 103 CMR 486.06(1), provided:

- (a) When the private investigator is working under attorney supervision:
 - (i) the private investigator is accompanied by the attorney; or,
 - (ii) the private investigator has, at least three (3) business days prior to the intended visit, supplied to the institution, a letter signed by the attorney which identifies the private investigator as working under the authorization and supervision of the attorney; and the attorney or a member of the attorney's staff has confirmed the letter when telephoned by an employee of the institution; or
- (b) When the inmate is not represented by counsel:
 - (i) the private investigator has provided a valid Court Order of appointment to an active legal matter or verification of an active pro se litigation.

Law student, paralegals, and private investigators shall have access to the attorney/client rooms, provided one is available for use. Attorneys shall be given priority when requesting use of attorney/client rooms should there be limited availability.

(5) Interpreters shall be entitled to access as provided in 103 CMR 486 for the purposes of assisting an attorney and shall not have access under this policy unless accompanied by an attorney.

486.07 Identification and Security Requirements

(1) Upon entry into an institution, an attorney shall be required to present a valid bar membership card and one (1) other piece of government-issued photographic identification if requested to do so by institution personnel. No other identification shall be required. When completing the Massachusetts Department of Correction Request To Visit Inmate Form, an attorney may provide his/her office address, in place of a home address.

(2) Upon entry into an institution, a law student, paralegal, private investigator and/or interpreter shall be required to present identification if requested to do so by institutional personnel. That identification shall include one piece of government-issued photographic identification. In addition, an interpreter shall provide verification of being screened and/or certified by the Massachusetts Trial Court Office of Court Interpreter Services. A private investigator shall provide verification of his/her active licensing or, verification of employment if exempt from said licensing requirements pursuant to M.G.L. c. 147, §23 . A law student, paralegal or private investigator who is not accompanying an attorney shall also provide a letter of introduction from his/her supervising attorney or, in the case of a private investigator, verification of pro se litigation, or a Court Order of appointment. The letter of introduction shall include the full name and office or school address of the law student, paralegal, or private investigator, and the supervising attorney's business name, office address, Board of Bar Overseers number, and telephone number. The court order shall have the court name, a legal caption and docket number. No other identification shall be required.

(3) Attorneys, law students, paralegals, private investigators, and interpreters shall be subject to all Departmental regulations and institutional policies governing visitors, not directly in conflict with 103 CMR 486.

(4) All attorneys entering an institution shall be subject to a metal detection scan. Such a scan shall initially consist of passing through a fixed metal detector or hand-held scanner depending upon which is in use by the particular institution. If the attorney successfully passes through the metal detector or hand-held scanner, he/she shall be allowed to enter the institution without further search.

(5) Should an attorney fail to pass through a fixed metal detector or hand-held scanner successfully, he/she shall be subject to a second scan by a fixed metal detector or hand-held scanner. If the attorney

successfully passes this second scan, he/she shall be allowed to enter the institution without further search.

(6) Should a secondary metal detection scan performed under 103 CMR 486.07(5), continue to indicate the presence of a metal object on the attorney's person, the correction officer conducting the scan shall inquire as to the cause of the interference. After the inquiry, the attorney shall be allowed to enter without further search, unless the correction officer has a reasonable suspicion of the presence of contraband on the attorney's person. If the correction officer has a reasonable suspicion of the presence of contraband, the attorney shall be afforded the opportunity to consent in writing to a pat down search, to leave the institution, or to request a non-contact visit with the inmate. If requested, a non-contact visit shall be afforded.

(7) Before any pat down search of an attorney is performed, a correction officer shall communicate to the shift commander the reasons for requesting the search. Pat down searches may take place only with the approval of the shift commander or such other person as the superintendent may designate.

(8) Whenever a correction officer requests a pat down search of an attorney the correction officer shall file, prior to the end of the officer's shift, an incident report citing the specific, articulable facts and circumstances supporting the request and the results of the request. If a pat down search of the individual occurs, the consent shall be recorded by the attorney signing a log book kept for that purpose. The attorney shall also be provided with a written receipt documenting his/her consent to a pat down search, which receipt shall be signed and dated by both the attorney and the correction officer. A copy of said receipt shall be kept by the institution. In addition, the details of the pat down search shall be included in the incident report filed pursuant to 103 CMR 486.07(6), and shall also be filed with the superintendent prior to the end of the officer's shift. Said details shall include, but not be limited to: the name of the attorney searched; the name of the searching officer and of the shift commander or superintendent's designee who approved the search; the extent of the search; what, if anything, was found; and any subsequent action taken based on the results of the search.

(9) Where probable cause exists to believe that a crime has been or is being committed by an attorney, law student, paralegal, private investigator, or interpreter on the grounds of an institution, arrest and prosecution of the suspected offender may be initiated pursuant to usual criminal procedure.

(10) Whenever an attorney is refused permission to enter an institution, the Commissioner and/or the General Counsel shall be notified of such action by the institution superintendent or a designee within 24 hours of the incident.

486.08 Requirements for Visiting Inmates: Delays

(1) Requirements for Visiting Inmates Housed in the General Population.

(a) Attorneys shall be permitted to visit inmates housed in the general population during institutional visiting hours for inmates and upon one hour notice at any other time between the hours of 9:00 A.M. and 8:30 P.M.

(b) If not accompanied by an attorney, law students, paralegals, and private investigators shall be permitted to visit inmates housed in the general population during institutional visiting hours for those inmates.

(2) Requirements for Visiting Inmates Housed Apart from the General Population.

(a) Attorneys shall be permitted to visit inmates housed apart from the general population between 9:00 A.M. and 8:30 P.M. and during other institutional visiting hours for those inmates.

(b) If not accompanied by an attorney, law students, paralegals, and private investigators shall be permitted to visit inmates housed apart from the general population during institutional visiting hours for those inmates.

(c) Law students, paralegals, and private investigators who wish to visit an inmate housed apart from the general population should normally give the institution advance notice at least one day prior to the proposed visit but the Department of Correction shall make reasonable efforts to accommodate such visits where prior notification was not practicable.

(3) Requirements for Visit with More Than One Inmate. An attorney, law student, paralegal, or private investigator who

intends to visit more than one inmate simultaneously shall request permission from the superintendent 24 hours in advance of such visit. Approval shall not be unreasonably withheld.

(4) Delays. Where a delay occurs in providing an attorney, law student, paralegal, or private investigator access to an inmate, the attorney, law student, paralegal, or private investigator affected shall be promptly informed of the expected duration of the delay.

(5) In emergency situations, and upon 24 hours notice, the Superintendent may grant extended visitation hours.

486.09 Legal Papers and Materials

(1) Attorneys, law students, paralegals, and private investigators shall be permitted to carry legal papers and legal writing materials into the attorney/inmate interview area. Said legal papers and materials shall be subject to inspection for contraband by institutional personnel but shall not be read or copied.

(2) Attorneys, law students, paralegals, or private investigators shall be permitted to leave legal papers or legal documents with inmates; however, excessive amounts of legal papers or legal documents may be required to be processed through the institutional property office. Legal papers or legal documents given to an attorney, law student or a paralegal by an inmate shall be subject to inspection for contraband by institutional personnel following the visit but shall not be read or copied.

(3) Attorneys, law students, paralegals, and private investigators shall be permitted to carry cameras, tape recorders and tapes, CDs and DVDs into the attorney/inmate interview area for use during an interview. All such audio/video playback equipment shall be subject to inspection for contraband by institutional personnel. Attorneys, law students, paralegals, and private investigators shall take all tapes, CDs and/or DVDs out of the institution with them. State-issued laptops for institutional use may be made available upon request with advance notice to, and approval by, the superintendent or his/her designee. Audio and/or video recording is prohibited.

486.10 Emergencies

(1) When an emergency exists within an institution, the superintendent or his/her designee may temporarily terminate visits by attorneys, law students, paralegals and private investigators.

(2) When visits are temporarily terminated, in accordance with 103 CMR 486.10(1), attorneys, law students, paralegals and private investigators shall be informed as soon as possible of the expected duration of the emergency.

486.11 Annual Review

103 CMR 486.00 shall be reviewed at least annually by the Commissioner or his/her designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File recommending revisions, additions, or deletions.

486.12 Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 486 is for any reason held by a court of competent jurisdiction to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 486.

REGULATORY AUTHORITY

103 CMR 486: M.G.L. c. 124, §1(q) and M.G.L. c. 127, §36A.

ATTORNEY SEARCH RECEIPT

DATE:

TIME:

INSTITUTION:

NAME AND ADDRESS OF ATTORNEY:

NAME OF CORRECTION OFFICER

I, _____ (Attorney Name) consent to a pat search by
correction officer _____.

The pat search took place at __: __ A.M./P.M. on _____ (date).

Attorney Signature

Correction Officer Signature